

ESTTA Tracking number: **ESTTA306668**

Filing date: **09/17/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050748
Party	Plaintiff Nike, Inc.
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Date	09/17/2009
Attachments	2009-09-17 First Amended Petition for Cancellation.pdf (8 pages)(1228820 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NIKE, INC.,)	
)	
Petitioner,)	Cancellation No. 92050748
)	
v.)	Registration No. 2,276,975
)	
SPARCO S.P.A.,)	Date of Issue: Sept. 14, 1999
)	
<u>Respondent.</u>)	

**FIRST AMENDED PETITION FOR CANCELLATION OF
A REGISTRATION ON THE PRINCIPAL REGISTER**

Petitioner, Nike, Inc. ("Petitioner"), an Oregon corporation, located at One Bowerman Drive, Beaverton, Oregon 97005, believes that it is being damaged by Principal Registration No. 2,276,975 for the mark "SPARCO" (the "Registration"), owned by Sparco S.p.A. ("Respondent") and hereby petitions to cancel the same pursuant to 15 U.S.C. § 1064.

As grounds of this petition, Petitioner alleges that:

1. Petitioner is a leading sports and fitness company, and a leading provider of a broad range of clothing, footwear, sporting goods and related products and services.
2. Petitioner uses the mark "SPARQ" in connection with certain of its products and services, and intends to continue such use.
3. Due to an acquisition effective January 9, 2009, Petitioner is the owner of several Federal applications and registrations featuring the mark "SPARQ." Assignments for these various applications and registrations have been recorded at the USPTO.
4. Respondent is listed in the U.S. Patent and Trademark Office records as the current record owner of the Registration.

5. Upon information and belief, Respondent is a corporation of Italy and has an address at Via Orazio Antinori 6, Torino Piedmont 10128, Italy.

6. The Registration is for the following goods: “sportswear treated to be fireproof; namely coats, waistcoats, overcoats, jackets, rainwear, slickers, raincoats, caps, hoods, balaclavas, face masks, sweaters, turtleneck sweaters, sweater vests, sweatshirts, vests, shirts, T-shirts, jumpsuits, tracksuits, overalls, Bermuda shorts, pants, jeans, shoes, boots, overshoes, socks, underwear, including briefs, undershirts, and bottoms, and gloves, including work gloves and fireproof gloves” in International Class 9 and “sportswear; namely coats, waistcoats, overcoats, jackets, rainwear, slickers, raincoats, caps, hoods, balaclavas, face masks, sweaters, turtleneck sweaters, sweater vests, sweatshirts, vest, shirts, T-shirts, jumpsuits, tracksuits, overalls, Bermuda shorts, pants, jeans, shoes, boots, overshoes, socks, underwear, including briefs, undershirts, and bottoms, and gloves, including work gloves and fireproof gloves” in International Class 25. *See* Exhibit A.

7. The Registration matured from Application Serial No. 75,141,983 (the “Application”), which was filed under the Lanham Act Section 1(a) on July 30, 1996.

8. The Application was subsequently amended to include the above-referenced list of goods in a response to the Trademark Office dated November 30, 1998. This response included a sworn statement signed by a principal of the Respondent pursuant to 37 C.F.R. § 2.20 that all statements made in the response on the Respondent’s own knowledge were true and those made on information and belief were believed to be true and that Respondent was currently using all of the goods in the above-referenced identifications.

9. On information and belief, Respondent was not using “SPARCO” as a trademark in connection with one or more of the goods identified in its description of goods in both Classes 9 and 25 as of November 30, 1998.

10. On information and belief, Respondent knew that it was not using “SPARCO” as a trademark in connection with one or more of the goods identified in its description of goods in both Classes 9 and 25 as of November 30, 1998.

11. On information and belief, Respondent asserted it was using the mark “SPARCO” as a trademark in connection with all of the goods identified in its description of goods in both Classes 9 and 25 as of November 30, 1998 with reckless disregard as to the truth or falsity of this assertion.

12. On information and belief, the above-identified misrepresentation of material fact was relied upon by the U.S. Patent and Trademark Office in determining Respondent’s rights to the Registration, or was otherwise material.

13. On information and belief, Respondent’s statement that it was using the mark “SPARCO” in connection with all goods identified in its identification of goods was a false misrepresentation of material fact knowingly made with reckless disregard as to its truth or falsity and therefore constitutes fraud on the U.S. Patent and Trademark Office.

14. On September 13, 2005, Respondent’s attorney filed a Declaration of Use and Incontestability (the “Declaration”) pursuant to Sections 8 and 15 of the Lanham Act. In this Declaration, Respondent included a sworn statement signed by Respondent’s attorney on Respondent’s behalf pursuant to 37 C.F.R. § 2.20 that all statements made in the response on the Respondent’s own knowledge were true and those made on information and belief were believed

to be true and that Respondent was currently using all of the goods in the above-referenced identifications.

15. On information and belief, Respondent was not using “SPARCO” as a trademark in connection with one or more of the goods identified in its description of goods in both Classes 9 and 25 as of September 13, 2005.

16. On information and belief, Respondent knew that it was not using “SPARCO” as a trademark in connection with one or more of the goods identified in its description of goods in both Classes 9 and 25 as of September 13, 2005.

17. On information and belief, Respondent asserted it was using the mark “SPARCO” as a trademark in connection with all of the goods identified in its description of goods in both Classes 9 and 25 as of September 13, 2005 with reckless disregard as to the truth or falsity of this assertion.

18. On information and belief, the above-identified misrepresentation of material fact was relied upon by the U.S. Patent and Trademark Office in determining Respondent’s continued rights to the Registration, or was otherwise material.

19. On information and belief, Respondent’s statement that it was using the mark “SPARCO” in connection with all goods identified in its identification of goods was a false misrepresentation of material fact knowingly made with reckless disregard as to its truth or falsity and therefore constitutes fraud on the U.S. Patent and Trademark Office.

20. For all of these reasons, Petitioner submits that Respondent’s Registration issued and/or was renewed as a result of fraud, or was otherwise improperly issued and/or renewed, and is subject to cancellation.

WHEREFORE, by its undersigned attorneys, Petitioner respectfully requests that this
Petition for Cancellation be sustained, and that Registration No. 3,268,998 be cancelled.

Respectfully submitted,

Date: September 17, 2009

By: 

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the attached First Amended Petition for Cancellation was filed electronically with the Trademark Trial and Appeal Board on September 17, 2009.



Michelle L. Calkins

CERTIFICATE OF SERVICE

I hereby certify that a copy of this First Amended Petition for Cancellation was served by first class mail to the following addresses on September 17, 2009, such being the Registrant's correspondence address listed on the TTABVue system as of this date:

Anthony Venturino and Elizabeth Pasquine
Novak Druce + Quigg LLP
1300 I Street, NW1000 West Tower
Washington, DC 20005



Michelle L. Calkins

EXHIBIT A

Int. Cls.: 9 and 25

Prior U.S. Cls.: 21, 22, 23, 26, 36, 38 and 39

Reg. No. 2,276,975

United States Patent and Trademark Office

Registered Sep. 14, 1999

TRADEMARK
PRINCIPAL REGISTER

SPARCO

SPARCO S.R.L. (ITALY CORPORATION)
CORSO RE UMBERTO I
10121 TORINO, ITALY

FOR: SPORTSWEAR TREATED TO BE FIRE-
PROOF; NAMELY COATS, WAISTCOATS,
OVERCOATS, JACKETS, RAINWEAR, SLICK-
ERS, RAINCOATS, CAPS, HOODS, BALACLA-
VAS, FACE MASKS, SWEATERS, TURTLE-
NECK SWEATERS, SWEATER VESTS, SWEAT-
SHIRTS, VESTS, SHIRTS, T-SHIRTS, JUMP-
SUITS, TRACKSUITS, OVERALLS, BERMUDA
SHORTS, PANTS, JEANS, SHOES, BOOTS,
OVERSHOES, SOCKS, UNDERWEAR, INCLUD-
ING BRIEFS, UNDERSHIRTS, AND BOTTOMS,
AND GLOVES, INCLUDING WORK GLOVES
AND FIREPROOF GLOVES, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-5-1981; IN COMMERCE
8-18-1993.

FOR: SPORTSWEAR; NAMELY COATS,
WAISTCOATS, OVERCOATS, JACKETS, RAIN-
WEAR, SLICKERS, RAINCOATS, CAPS,
HOODS, BALACLAVAS, FACE MASKS,
SWEATERS, TURTLENECK SWEATERS,
SWEATER VESTS, SWEATSHIRTS, VEST,
SHIRTS, T-SHIRTS, JUMPSUITS, TRACKSUITS,
OVERALLS, BERMUDA SHORTS, PANTS,
JEANS, SHOES, BOOTS, OVERSHOES, SOCKS,
UNDERWEAR, INCLUDING BRIEFS, UNDER-
SHIRTS, AND BOTTOMS, AND GLOVES, IN-
CLUDING WORK GLOVES AND FIREPROOF
GLOVES, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 5-2-1983; IN COMMERCE
5-3-1983.

OWNER OF U.S. REG. NO. 1,367,444.

SER. NO. 75-141,983, FILED 7-30-1996.

JOAN LESLIE BISHOP, EXAMINING ATTOR-
NEY